



Substitute House Bill No. 6741

Public Act No. 17-119

AN ACT CONCERNING THE RIGHT OF COUNSEL TO ACCESS RECORDS IN CERTAIN ABUSE AND NEGLECT PROCEEDINGS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. Section 46b-129a of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2017*):

In proceedings in the Superior Court under section 46b-129:

(1) The court may order the child, the parents, the guardian, or other persons accused by a competent witness of abusing the child, to be examined by one or more competent physicians, psychiatrists or psychologists appointed by the court;

(2) (A) A child shall be represented by counsel knowledgeable about representing such children who shall be assigned to represent the child by the office of Chief Public Defender, or appointed by the court if there is an immediate need for the appointment of counsel during a court proceeding. If the child's parent or guardian has been accused by a competent witness of abusing the child, or of causing the child to be neglected or uncared for, upon the assignment or appointment of counsel, such counsel shall be granted immediate access to (i) records relating to the child, including, but not limited to, Department of Social Services records and medical, mental health and substance abuse

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treatment, law enforcement and educational records, without the necessity of securing further releases, and (ii) the child, for the purpose of consulting with the child privately. The court shall give the parties prior notice of such assignment or appointment. Counsel for the child shall act solely as attorney for the child.

(B) If a child requiring assignment of counsel in a proceeding under section 46b-129 is represented by an attorney for a minor child in an ongoing probate or family matter proceeding, the court may appoint the attorney to represent the child in the proceeding under section 46b-129, provided (i) such counsel is knowledgeable about representing such children, and (ii) the court notifies the office of Chief Public Defender of the appointment. Any child who is subject to an ongoing probate or family matters proceeding who has been appointed a guardian ad litem in such proceeding shall be assigned a separate guardian ad litem in a proceeding under section 46b-129 if it is deemed necessary pursuant to subparagraph (D) of this subdivision.

(C) The primary role of any counsel for the child shall be to advocate for the child in accordance with the Rules of Professional Conduct, except that if the child is incapable of expressing the child's wishes to the child's counsel because of age or other incapacity, the counsel for the child shall advocate for the best interests of the child.

(D) If the court, based on evidence before it, or counsel for the child, determines that the child cannot adequately act in his or her own best interests and the child's wishes, as determined by counsel, if followed, could lead to substantial physical, financial or other harm to the child unless protective action is taken, counsel may request and the court may order that a separate guardian ad litem be assigned for the child, in which case the court shall either appoint a guardian ad litem to serve on a voluntary basis or notify the office of Chief Public Defender who shall assign a separate guardian ad litem for the child. The guardian ad litem shall perform an independent investigation of the

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case and may present at any hearing information pertinent to the court's determination of the best interests of the child. The guardian ad litem shall be subject to cross-examination upon the request of opposing counsel. The guardian ad litem is not required to be an attorney-at-law but shall be knowledgeable about the needs and protection of children and relevant court procedures. If a separate guardian ad litem is assigned, the person previously serving as counsel for the child shall continue to serve as counsel for the child and a different person shall be assigned as guardian ad litem, unless the court for good cause also determines that a different person should serve as counsel for the child, in which case the court shall notify the office of Chief Public Defender who shall assign a different person as counsel for the child. No person who has served as both counsel and guardian ad litem for a child shall thereafter serve solely as the child's guardian ad litem.

(E) The counsel and guardian ad litem's fees, if any, shall be paid by the office of Chief Public Defender unless the parents or guardian, or the estate of the child, are able to pay, in which case the court shall assess the rate the parent or guardian is able to pay and the office of Chief Public Defender may seek reimbursement for the costs of representation from the parents, guardian or estate of the child;

(3) The privilege against the disclosure of communications between husband and wife shall be inapplicable and either may testify as to any relevant matter; and

(4) Evidence that the child has been abused or has sustained a nonaccidental injury shall constitute prima facie evidence that shall be sufficient to support an adjudication that such child is uncared for or neglected.

Approved July 5, 2017